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PP RUEHWEB

DE RUEHUL #0629/01 1070133
ZNR UUUUU ZZH
P 170133Z APR 09
FM AMEMBASSY SEOUL
TO RUEHC/SECSTATE WASHDC PRIORITY 4052
INFO RUEHBJ/AMEMBASSY BEIJING 5704
RUEHRL/AMEMBASSY BERLIN 1569
RUEHLO/AMEMBASSY LONDON 1269
RUEHMO/AMEMBASSY MOSCOW 9571
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RUEHUM/AMEMBASSY ULAANBAATAR 1805
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UNCLAS SEOUL 000629

SENSITIVE
SIPDIS

H PASS TO CHIEF JUSTICE ROBERTS
IIP/S FOR P. DENIG, R. TRIPP, J. JASIK

E.O. 12958: N/A
TAGS: PGOV PREL PHUM KS KN
SUBJECT: CONSTITUTIONAL COURT PRESIDENT DISCUSSES
INFLUENCES, EXCHANGES WITH AMBASSADOR

¶1. (SBU) SUMMARY: On April 13 the Ambassador visited the Constitutional Court of Korea for a cordial courtesy call on President Lee Kang-kook, a tour of the "green" building (including its rooftop garden), and a roundtable discussion. President Lee said he looked forward to his May 13 visit to the United States and the U.S. Supreme Court, including a visit with Chief Justice John Roberts. Lee expressed his desire for more judicial exchanges with the U.S. and more access to the U.S. Supreme Court, noting the increasing influence U.S.-educated lawyers were having on the Korean legal system. Lee also discussed some of the judicial exchanges Korea had with other countries and the challenge of working with China. The Ambassador also spoke at a roundtable at the Constitutional Court with about forty judges and staffers. END SUMMARY.

Background

¶2. (SBU) The Constitutional Court of Korea (CCK) was established in 1988 by the Korean Constitution, promulgated just one year earlier. The CCK is comprised of nine justices -- three are appointed by the President, three are elected by the National Assembly, and three are designated by the Chief Justice of the Supreme Court. The justices serve six-year renewable terms. With the CCK lies the power to determine the constitutionality of laws. Currently pending before the CCK is a suit filed by the National Human Rights Commission of Korea questioning the constitutionality of current government efforts to downsize the Commission. The CCK also presides over impeachment proceedings against certain high-ranking officials. In 2004, the court ruled that, although then-President Roh Moo-hyun had violated election laws, these election law violations were insufficient grounds for his impeachment.

¶3. (SBU) The CCK's jurisdiction is limited. The court may hear cases concerning: the constitutionality of statutes upon the request of the ordinary courts; dissolution of a political party; competence disputes between state agencies, between a state agency and a local government, or between

local governments; and constitutional complaints filed directly to the court challenging a law. The Constitutional Court does not rule on verdicts decided by the Korean Supreme Court. If, however, the Supreme Court's verdict is based on acts or rules that the CCK finds to be unconstitutional, the Supreme Court's verdict is overturned. This ability of the CCK to effectively overrule Supreme Court decisions has prompted some observers to question the overall structure of the Korean judicial system.

German Model, U.S. Influence

¶4. (SBU) On April 13 the Ambassador met with Lee Kang-kook, President of the CCK. Lee noted that the CCK was established in 1988 and celebrated its 20th anniversary last year. The court was modeled on the German Constitutional Court and functioned similarly. Lee said that 32 years ago he had studied in Germany; in those days Korean and Japanese students thought it was more appropriate to study law there. Now, Lee said, most lawyers and prosecutors would rather study in the United States than in Europe and were very familiar with U.S. legal cases and procedures. Lee noted that this trend would have a profound impact on the Korean legal system and might necessitate changes in the court to make it more similar to the U.S. Supreme Court. Lee and the Ambassador discussed recent press reporting on debate in the United States on the precedential value of foreign court decisions and the potential impact on legal thinking in U.S. jurisprudence.

¶5. (SBU) Lee said that Korean lawyers wanted to study in the U.S. because it was the only superpower, and Koreans wanted to learn from the United States. example so that Korea could itself become an advanced power. Lee said he wished there was more interaction now between U.S. and Korean courts.
(NOTE: The Department-coordinated U.S. Observation Program for the Korean Judiciary in 2008 brought over 30 judges to the United States. END NOTE.) Lee confirmed he was planning a trip to the U.S. on May 13 and hoped to meet with Chief Justice John G. Roberts.

¶6. (SBU) Lee commented that there remained quite a bit of mystique surrounding the U.S. Supreme Court. Noting that he had read "The Brethren," he wondered if the book accurately reflected the way the court worked. Lee said that in both Germany and Korea the court worked very differently from the U.S., where a very aggressive dynamic in arguing cases prevailed. Lee said this was something he looked forward to learning more about in his upcoming trip.

Korean Exchanges with Mongolia, China

¶7. (SBU) The Ambassador queried Lee about Korean judicial exchanges with other countries, particularly those where democracy is new or not yet developed. She observed that Korea's status as a country that had democratized very recently and quickly gave it unique experience to share with developing countries. Lee's staff noted that the Korean judiciary cooperated extensively with Mongolia, but had limited success in outreach to China. Lee said that Chinese legal traditions were very different from the Western concept of rule of law. If China wanted to become a real superpower, however, it would need to study and emulate the systems of the U.S., Japan, Germany, and the U.K. The Ambassador encouraged Lee to continue Korea's judicial outreach efforts with China.

STEPHENNS